IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1-10-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.21408 of 2006
and
MP No.2 of 2006

Chandrakumar Thomas .. Petitioner

vs

1.Government of Tamil Nadu
rep. By Secretary to Government
Home (Police) Department
Fort St. George
Chennai 600 009.
2.The Director General of Police
Chennai 600 004. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to (1) charge memo in P.R.No.18/2005 (C.No.237920/GBV(2)/2004) dated 8.1.2005 of the second respondent and (2) Letter No.124330/Pol.2/2005-1, dated 26.4.2006 of the first respondent and quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.R.Jothimanian
Additional Government
Pleader

ORDER

This writ petition has been brought forth by the petitioner seeking a writ of certiorari to quash the charge memo in P.R.No.18/2005 (C.No.237920/GBV(2)/2004) dated 8.1.2005 and also the Letter No.124330/Pol.2/2005-1 dated 26.4.2006, of the first respondent.

2.The affidavit in support of the petition and the counter affidavit are perused. The Court heard the learned Counsel on either side.

3.The admitted facts are as follows:

(a) The petitioner, on promotion as Deputy Superintendent of Police with effect from 8.3.2004, was serving as Assistant Commissioner of Police. A charge memo was served upon him for

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initiating disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (D. & A.) Rules dated 8.1.2005. Three charges were levelled against him which would run as follows:

1.Gross neglect of duty and slack supervision in having registered a case in District Crime Branch Cr.No.9/2004 under Section 403 and 406 IPC after a delay of one and half months on the complaint of Thiru K.T.Anbalagan and 7 Trustees of Jai Bharath Charitable Trust, Chennai and also having failed to take any interest in getting the legal opinion quickly and taking legal action without loss of time.

2.Reasonable conduct and dereliction of duty in having failed to arrest Thiru.A.Jayamohan, Ex. M.P., (A1) in a criminal case registered against him on 1.9.2004 in Vellore DCB Cr.No.9/2004 under Sections 403 and 406 IPC from 15.9.2004 till he obtained anticipatory bail at High Court, Chennai on 10.11.2004.

3.Indifferent and irresponsible attitude in having failed to arrest Thiru.A.Jayamohan, Ex.M.P., (A1) on 29.10.2004 when he appeared in person before the High Court, Chennai in a contempt of Court case, even though prior information was given to you by the complainant and by your superiors to arrest the accused.

(b) An explanation was tendered by him. Pending the same, he filed W.P.No.8415/2005 on the file of this Court challenging the disciplinary proceedings wherein an order was passed on 14.3.2005 with a direction to the authority to complete the proceedings within a period of six months therefrom. In the course of the detailed explanation, the petitioner has emphatically denied all the charges. An Enquiry Officer was appointed, who on enquiry, found the charge Nos.1 and 2 proved and the charge No.3 not proved. The enquiry report was also served upon him along with a show cause notice calling for further representation thereon. While the matter stood thus, the petitioner has approached this Court challenging the original charge memo served upon him.

4.Advancing his arguments on behalf of the petitioner, the learned Counsel would submit that the charge memo has got to be quashed for the following reasons.

(a) Firstly, this Court made an order in WP No.8415/2005 on 14.3.2005, directing the authority to complete the enquiry within a period of six months, but not done so. The proceedings were over after a long lapse of time. Under the circumstances, it is a fit case where it has got to be quashed.

(b) Secondly, at the time when the charge memo was issued to the petitioner, the Inspector of Police was also served with the charge memo for the same charges. As regards the Inspector of Police, he was absolved from his liability. Once the charge memo on the same facts was served upon different persons, the entire proceedings should have been conducted against both at the same time, but not done so. In this case, the Inspector of Police, against whom charges were levelled, has been found not guilty, and hence, the entire proceedings have been vitiated.

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5.Added further the learned Counsel that a reading of the charge would clearly indicate that unless a severe punishment is to be awardable, no question of framing a charge under Rule 17(b) of the said Rule would arise; that a reading of the charge would also indicate that it is a fit case where if at all a charge has got to be framed, it should have been done under Rule 17(a) of the Service Rules, but not done so; that for all the above grounds, the initial proceedings and the following proceedings have got to be quashed.

6.The Court heard the learned Additional Public Prosecutor on the above contentions.

7.After careful consideration of the rival submissions made and looking into the materials available, this Court is of the considered opinion that the writ petition requires a very short order. It is not in controversy that a charge memo was served upon the petitioner on 8.1.2005 levelling three charges as shown above. True it is, there was a direction given by this Court on 14.3.2005, when the entire charge memo was challenged by the petitioner herein, directing the department to complete the enquiry within a period of six months. It is also clear that it is not done so. But, it does not mean that on that ground, the entire proceedings could be either quashed, or the charge memo could be quashed. Now, at this juncture, it is pertinent to point out that the entire enquiry is over, and the report of the Enquiry Officer along with the second show cause notice has been served upon the petitioner. At that time, what is expected to be done by the petitioner is to make his further representation; but, he has not done so. Now, he approached this Court by filing this writ petition. This Court is of the considered opinion that after an enquiry was over and after the report is also served upon the petitioner along with the second show cause notice, for which he is to file his further representation, no question of quashing the charge at this stage would arise.

8.Added further, the contention put forth by the learned Counsel for the petitioner that the reading of the charge would indicate that it is a case where charge memo should have been issued only under Rule 17(a) and not under 17(b) cannot be countenanced. This Court feels that it is a fit and proper case where the request of the petitioner has got to be denied. But, at the same time, the petitioner is given liberty to raise all the contentions before the forum where the matter is pending. It is brought to the notice of the Court that the petitioner is going to retire on attaining superannuation, on 30.9.2007. In such circumstances, it would be fit and proper to issue a direction to the authority below to consider the representation of the petitioner and if necessary, to make an enquiry over the same as early as practicable preferably within a period of eight weeks herefrom. Accordingly, a direction is issued, and this writ

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petition is disposed of. No costs. Consequently, connected MP is closed.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary to Government
Home (Police) Department
Fort St. George
Chennai 600 009.

2.The Director General of Police
Chennai 600 004.

+ 1 cc to Mr. M. Ravi, Advocate SR No. 61033

+ 1 cc to the Government Pleader, High Court, Madras SR No.61284

LA(CO)
SR/5.10.2007

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